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Trials & TRIBULATIONS

Supreme Court gets the IDEA

The Individuals with Disabilities Education Act, previously known as the Education for All Handicapped Children Act, is a four-part measure that offers federal funding to states in exchange for providing children with disabilities access to public education. Critical to the act is the individualized education program ("IEP"), which requires that states prepare and establish a comprehensive plan that is tailored to meet the needs of each individual child.

The act provides states with guidelines for crafting an IEP, the aim of which is to afford each student with a disability a "free appropriate public education" ("FAPE"). However, as with most legislation, there is a fair amount of ambiguity and room for interpretation. Reversing the Tenth Circuit, the Supreme Court of the United States in *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 2017 WL 1066260, 580 U.S. ___ (March 22, 2017), recently addressed the standard for determining whether a school district has met the requirements of the act for providing a FAPE.

The petitioner in *Endrew F.* had been diagnosed with autism, a qualifying disability under the act, at the age of 2. Despite his diagnosis, Endrew had attended public school in Colorado at the Douglas County School District until fourth grade. Up until that point, the school district had adjusted his IEP each year to address his unique educational needs.

However, by the end of fourth grade, Endrew's parents were worried about the lack of progress Endrew had been making in school. While Endrew was described by teachers as a humorous child with a sweet



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disposition, he was prone to outbursts and had irrational fears of things such as public restrooms and flies. As a result of his stalled academic progress, Endrew's IEP essentially sought to reach the same goals year after year. Dissatisfied with the lack of progress, Endrew's parents enrolled him in a private school specifically designed to assist autistic children. Within months, Endrew's behavior improved and he began to achieve academic progress.

Approximately six months after Endrew enrolled in private school, his parents met with Douglas County School District representatives to discuss a new IEP. According to Endrew's parents, the newly proposed IEP was similar to the previous proposal, despite the fact that the new approach taken by the private school had been successful. As a result, Endrew's parents rejected the IEP and filed a complaint with the Colorado Department of Education on the grounds that the school district had failed to provide Endrew with a FAPE prior to his enrollment in private school.

An administrative law judge heard the case and denied the parents' request for reimbursement of Endrew's private school tuition. The District Court affirmed, finding that Endrew's performance reflected at least minimal progress under the previous IEPs and, therefore, the District Court

concluded that the latest IEP proposal would result in similar progress.

On appeal, the Tenth Circuit affirmed, finding that Endrew's IEP was "reasonably calculated to enable [him] to make some progress." *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. Re-1*, 798 F.3d 1329, 1342 (10th Cir. 2015). In arriving at this conclusion, the Tenth Circuit relied on a prior Supreme Court decision, *Board of Education v. Rowley*, 458 U.S. 176 (1982), in which the Court reasoned that Congress' intent was to provide a "basic floor of opportunity" for disabled children consisting "of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 201.

The Supreme Court unanimously reversed the Tenth Circuit's decision and remanded the case for further proceedings. In its decision, the Court acknowledged that its previous decision in *Rowley* failed to articulate a standard by which educational assistance under the act should be evaluated. *Endrew F.*, 2017 WL 1066260, at *10. However, the Court refused to accept the Tenth Circuit's interpretation of *Rowley*, instead holding that a state may meet its obligations under the act by establishing an IEP that is "reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." *Id.*

While the Court found the Tenth Circuit's *de minimis* standard deficient under the act, it declined to adopt the more stringent standard advanced by Endrew,

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who argued that the act requires states to provide a child with a disability substantially equal opportunities to achieve academic success and self-sufficiency as students without a disability. Notably, a similar standard had been advanced by Justice Blackmun in his concurring opinion in *Rowley*, but was rejected by the majority at that time. Following the majority in *Rowley*, the Court again elected not to adopt the “equal opportunity” standard. *Id.* at *12.

By adopting the “reasonably calculated” standard, the Court acknowledged the inherent problem facing public educators. Specifically, the individual re-

quirements of each IEP may vary dramatically from child to child, depending on the unique needs or circumstances of that individual. Establishing a universal set of requirements, one that may streamline the procedure for school districts, would invariably lead to many students receiving an inadequate level of educational assistance. The Court specifically noted that the core of the act is a focus on each particular child and that “every child should have the chance to meet challenging objectives.” *Id.* at *10.

The Court’s desire to eschew a one-size-fits-all approach to educating children with disabilities will hopefully permit those same students an opportunity

to receive the level of instruction and assistance their unique circumstances dictate. At a time when it appears government institutions are becoming increasingly monolithic, it is refreshing for the Court to demand creativity from public officials when dealing with such a complex matter. While this may very well result in additional time and energy spent, the critical importance of educating children demands and deserves a hands-on approach.

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